

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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NAL/Acct. No.: 200832940003
FRN: 0004256426

² 47 U.S.C. § 503(b).

determined that the 109.5 MHz signal was attenuated 18.0 db from the carrier of K238AK, the 122.2 MHz signal was attenuated 30.8 db from the carrier of K238AK and the 136.1 MHz signal was attenuated 20.9 db from the carrier of K238AK

4. On March 14, 2008, the agent returned to the studio location of KRCK and the transmitter site of K238AK and conducted another set of measurements on the three previously observed signals transmitting KRCK audio on VHF aviation frequencies. The results of those measurements are as follows: the 109.5 MHz signal was attenuated 19.8 db from the carrier of K238AK, the 122.2 MHz signal was attenuated 23.4 db from the carrier of K238AK and the 136.1 MHz signal was attenuated 18.0 db from the carrier of K238AK. The agent then inspected FM Broadcast Translator station K238AK at the studio location of KRCK. During the inspection, the agent requested that the translator station be taken off the air and by using portable measurement equipment, determined that all three signals previously measured in the aviation band went off the air and returned whenever the K238AK transmitter was switched off. The agent determined that the measured signals on 109.5 MHz, 122.2 MHz, and 136.1 MHz, were spurious emissions emanating from station K238AK.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

6. Section 74.1236(c) of the Rules requires that "(T)he power of the emissions appearing outside the assigned channel shall be attenuated below the total power of the emission as follows: ... (Distance of emission from center frequency) Over 600 kHz (Minimum attenuation below unmodulated carrier) 60 db." The frequencies of the spurious emissions, 109.5 MHz, 122.2 MHz, and 136.1 MHz, are each more than 600 kHz from the K238AK assigned channel of 95.5 MHz. Consequently, each of the spurious emissions was required to be attenuated at least 60 db below the K238AK fundamental frequency of 95.5 MHz. On both March 13, 2008, and March 14, 2008, none of the three spurious emissions on 109.5 MHz, 122.2 MHz, and 136.1 MHz, were attenuated 60 db or more from the K238AK fundamental frequency. Playa was notified by the San Diego Office that transmissions containing the audio of station KRCK were transmitting in the aviation band. Further investigation by the San Diego Office revealed that a translator station, K238AK, licensed to Playa was the source of the spurious emissions on 109.5 MHz, 122.2 MHz, and 136.1 MHz. Playa was advised by the San Diego Office of the transmissions of the KRCK signal on aviation frequencies on March 12, 2008, yet Playa failed to take action to respond to and eliminate the continuing unauthorized transmissions for more than two days. Therefore, Playa's violation was willful and repeated. Based on the evidence before us, we find that Playa apparently willfully and repeatedly violated Section 74.1236(c) of the Rules by failing to adequately attenuate by at least 60 db the spurious emissions from its translator station, K238AK, on 109.5 MHz, 122.2 MHz, and 136.1 MHz.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

7. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for unauthorized emissions is \$4,000.⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Playa is apparently liable for a \$4,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Playa del Sol Broadcasters is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 74.1236(c) of the Rules.⁷

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Playa del Sol Broadcasters **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Playa Del Sol Broadcasters shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner St, Suite 370, San Diego, California 92111 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 74.1236(c).

⁸ See 47 C.F.R. § 1.1914.

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of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Playa del Sol Broadcasters.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director,
San Diego District Office
Western Region
Enforcement Bureau